

contention that this formula represents a broad general shape which can be modified to represent almost any shape, thus rendering the claims indefinite. Applicants disagree.

Firstly, the Examiner does not appear to, nor should he, have any problem in interpreting exactly what the language of the claims intends. Indeed, the Examiner's position is not that one of ordinary skill in the art would not understand how to define the shape of the present apparatus based upon this formula, but that it is a broad limitation which covers "almost any shape." This, however, does not render the claim indefinite under § 112. Indeed, since in any event, this is the only rejection which is directed to claim 29, the Examiner appears to be contending that, if this limitation were deleted from this claim, the claim would be allowable. Since the only potential effect of deleting this limitation would be to broaden the claim, applicants inquire as to why a narrower claim is indefinite for being too broad, but a broader claim meets the limitations of § 112 and is patentable? The answer is that, even if this limitation is broad, and is not being specifically relied upon to distinguish over the art, it nevertheless represents a legitimate limitation which should be included in these claims, unless one cannot understand its meaning. This, however, does not appear to be the case nor even the allegation here.

Applicants do not necessarily agree with the Examiner's position with respect to the breadth of this limitation. Applicants thus submit that this limitation is entirely understandable, and that when the specific ranges of the elements of the polynomial itself are plugged into that equation, a reasonable genus of shapes is provided thereby. It is applicants' position, however, that even if the Examiner were correct that "almost any shape" could result, this does not

provide a basis for rejecting these claims in the first instance.

In applicants' view, the Examiner has thus crossed the line from indefiniteness to undue breadth, which is not an appropriate rejection. Indeed, under the requirements of § 112, indefiniteness requires an analysis of "whether one skilled in the art would understand the bounds of the claim when read in light of the specification . . . if the claims read in light of the specification reasonably apprise those skilled in the art of the scope of the invention, § 112 demands no more." *Credle v. Bond*, 25 F.3d 1566, 30 U.S.P.Q.2d 1911 (Fed. Cir. 1994).

Once again, in this case, it is clear that the claim limitation in question is not indefinite and does not violate the bounds of § 112. Indeed, the Examiner is not believed to be stating that this is the case. The Examiner apparently had no trouble interpreting this limitation, but states that it is too broad. However, there are other limitations in the claim, and indeed these limitations have apparently successfully defined this invention over the art. The inclusion of another limitation, albeit broad or narrow, in the claims cannot thus somehow render the claim violative of § 112. It is therefore respectfully requested that the Examiner reconsider his position with respect to these claims, and in view of the patentability of these claims, allow this application in its present form.

Finally, the Examiner has also raised an issue of obviousness-type double patenting over the claims of co-pending Application No. 10/101,652. It is noted in this regard that this application has now issued as U.S. Patent No. 7,131,996 ("the '996 patent"). While applicants respectfully submit that the claims in the '996 patent are patentably distinct from the present claims, in order to overcome this objection, applicants are willing to consider the filing of a terminal disclaimer in

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this case. Thus, if the Examiner agrees to the allowance of the present claims, such action will then be considered.

If for any reason, the Examiner still does not believe that the present claims are in condition for allowance, however, it is respectfully requested that he telephone applicants' attorney at (908) 654-5000 in order to overcome any further objections which he might have to the allowance of these claims.

Finally, if there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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